

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2134 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

HEIRS OF ARIF TARMOHMAD

Versus

STATE OF GUJARAT

Appearance:

MS SEJAL K MANDAVIA for Petitioners

MS SIDDHI TALATI for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 16/09/97

ORAL JUDGMENT

Heard learned counsel for the parties.

2. This matter has arisen under the Gujarat Entertainment Tax Act, 1977 and the Rules framed thereunder. The petitioner, who was running a video centre, was directed to pay certain amount of entertainment tax but he has not paid the same and ultimately the matter has been taken up by him before the

appellate authority. The order of the appellate authority is on record of this Special Civil Application as annexure 'A' which is dated 25th June 1992.

3. One of the contentions made by learned counsel for the petitioner is that the appellate authority has passed the aforesaid order without giving any opportunity of hearing to the petitioner or his counsel. In the Special Civil Application, the petitioner has averred that hearing of the appeal was fixed on 18th May 1992 and the petitioner and his advocate were present before the appellate authority, i.e. Collector, Junagadh, but because of arrival of Minister, the Collector was not available. The Personal Assistant to the Collector has fixed hearing at 1:30 p.m. on the very day. Again the petitioner and his advocate went at 1:30 p.m. but as per the say of petitioner, the hearing did not take place and the Personal Assistant to the Collector informed the petitioner to give adjournment report which he did. However, in the impugned order, the Collector has stated that the petitioner or his advocate did not remain present and decided the appeal on merits without hearing the petitioner.

4. These facts stated by the petitioner in the Special Civil Application have not been controverted by respondents. What the respondent, in its reply, stated that it was due to some special duty the appellate authority might not have heard the petitioner, but the petitioner was duty bound to give written reply instead of giving the application for adjournment. The learned counsel for the respondents, during the course of arguments, does not dispute that on the day fixed for hearing of the said appeal, the Collector was busy in connection with special duty which has arisen because of arrival of the Minister.

5. In the facts of this case, as aforesaid, in case on 18th May 1992, the appellate authority could not hear the petitioner or his advocate, then they should have been given another opportunity of hearing rather than deciding the matter on merits. However, this procedural error committed by the appellate authority has to be corrected. Accordingly, this Special Civil Application is allowed and the order of the appellate authority dated 25th June 1992 is quashed and set aside and the matter is sent back to the appellate authority, the Collector, Junagadh, to restore the appeal of the petitioner to its original number and decide the same on merits after giving the opportunity of hearing to the petitioner or his counsel. The petitioner is directed to present

himself or his advocate before the appellate authority on 24th November 1997. Rule made absolute in aforesaid terms with no order as to costs.

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(sunil)